

[Doc. No. 23]

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**CHAMBERS OF
JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE**

**MITCHELL H. COHEN COURTHOUSE
1 John F. Gerry Plaza, Room 2060
CAMDEN, NJ 08101-0887
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**LETTER ORDER
ELECTRONICALLY FILED**

November 6, 2008

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Re: **Carlson v. Twp. of Lower Alloways Creek, et al.
Civil No. 06-3779 (RBK)**

Dear Counsel:

This Letter Order addresses plaintiff's "Motion to Amend the Pleadings to Add Additional Claims for Relief." [Doc. No. 23]. The Court has received defendants' opposition and exercised its discretion to decide plaintiff's motion without oral argument. For the reasons to be discussed, plaintiff's motion is DENIED WITHOUT PREJUDICE. By November 20, 2008, plaintiff is ORDERED to serve the court with a revised proposed amended complaint consistent with this Letter Order. See Phillips v. County of Allegheny, 515 F.3d 224, 245 (3d Cir. 2007) (a district court must permit a curative amendment unless such an amendment would be inequitable or futile).

Plaintiff must submit a new proposed amended complaint because the Court is unable to decipher the claims in the complaint attached to his motion. First, plaintiff's amended pleading shall include all of plaintiff's averments and not just those in the new counts. Two, plaintiff's amendment refers to a "Sixth Claim for Relief" when the original complaint only contains four claims. This shall be corrected. Three, plaintiff must plead a separate Count for each of his proposed new causes of action. For example, the Court does not know if plaintiff is alleging a separate cause of action for breach of contract and breach of the duty of good faith and fair dealing, or if this is

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just one claim. Four, plaintiff must plead the elements of his causes of action, and facts to support his claims, and not simply conclusory statements. See Bell Atlantic Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1959 (2007) (a plaintiff's obligation to plead the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do). Five, plaintiff must clarify the nature of his due process claim which is presently unclear.

As noted, plaintiff shall serve the Court with his proposed amended pleading by November 20, 2008. Defendants may serve a letter brief with their objections to the pleading by December 1, 2008. No further briefing on the issue shall be permitted.

The Court will conduct an in-person status conference on December 9, 2008 at 9:30 a.m. All counsel shall be present.

Very truly yours,

s/ Joel Schneider

JOEL SCHNEIDER

United States Magistrate Judge

JS:jk

cc: Hon. Robert B. Kugler